

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
PG&E CORPORATION) Chapter 11
)
) San Francisco, California
Debtor.) Tuesday, July 11, 2023
) 10:00 AM

STATUS CONFERENCE REGARDING
REORGANIZED DEBTORS'
OBJECTION TO PROOF OF CLAIM
NO. 2090 FILED BY AMIR
SHAHMIRZA FILED BY PG&E
CORPORATION [12130]

STATUS CONFERENCE REGARDING
MOTION FOR ENTRY OF AN ORDER
FURTHER EXTENDING DEADLINE
FOR THE REORGANIZED DEBTORS
TO OBJECT TO CLAIMS AND FOR
RELATED RELIEF FILED BY PG&E
CORPORATION [13745]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (All present by video or telephone):

For the Debtor: STEVEN A. LAMB, ESQ.
Rovens Lamb LLP
2601 Airport Drive, Suite 370
Torrance, CA 90505
(310)536-7830

For the Claimant: **LAWRENCE A. JACOBSON, ESQ.**
Cohen and Jacobson, LLP
66 Bovet Road, Suite 285
San Mateo, CA 94402
(650)261-6280

1 For the Reorganized
2 Debtors:

THOMAS B. RUPP, ESQ.
Keller Benvenutti Kim LLP
650 California Street, Suite 1900
San Francisco, CA 94108
(415)636-9015

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18 Court Recorder:

LORENA PARADA/ANKEY THOMAS
United States Bankruptcy Court
450 Golden Gate Avenue
San Francisco, CA 94102

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20 Transcriber:

HEIDI JOLLIFF
eScribers, LLC
7227 N. 16th Street
Suite #207
Phoenix, AZ 85020
(800) 257-0885

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1 SAN FRANCISCO, CALIFORNIA, TUESDAY, JULY 11, 2023, 10:00 AM

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3 (Call to order of the Court.)

4 THE CLERK: The parties are joining. Court is now in
5 session. The Honorable Dennis Montali presiding, calling the
6 matter of PG&E Corporation.

7 THE COURT: All right. Good morning. Mr. Rupp?

8 MR. RUPP: Good morning, Your Honor. Thomas Rupp of
9 Keller Benvenutti Kim for the reorganized debtors.

10 THE COURT: Mr. Lamb, good morning.

11 MR. LAMB: Good morning, Your Honor. Steve Lamb for
12 the debtors.

13 THE COURT: And Mr. Jacobson, about to join us, I
14 believe. Okay. Mr. Jacobson, can you hear me?

15 MR. JACOBSON: I can. Am I here?

16 THE COURT: Yes. Okay. State your appearance.

17 MR. JACOBSON: Good morning. Lawrence Jacobson
18 appearing for Claimant Komir, Inc.

19 THE COURT: So Mr. Jacobson, these two other gentlemen
20 turned down our invitation to not have a hearing today, so --

21 MR. JACOBSON: They did.

22 THE COURT: Mr. Lamb or Mr. Rupp, what's your
23 pleasure, and what's wrong with this schedule?

24 MR. LAMB: Your Honor, thank you for your time. I
25 appreciate it. And we've reviewed the tentative and the

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1 schedule that was proposed by Mr. Jacobson and just requesting
2 what I believe is a rather minor shift in that because it does
3 not currently accord forward, provide us the opportunity to
4 take some discovery. And so basically, what we're requesting,
5 and I'll detail this, is we're requesting that essentially the
6 dates shift about a month and a half or two.

7 THE COURT: Okay.

8 MR. LAMB: And basically, as I see the tentative, Your
9 Honor, it states that this dispute has been known and
10 anticipated for years. And with all due respect, we don't
11 believe that that's completely accurate because what happened
12 here is the original dispute was regarding the lowering of the
13 transmission lines, and it was this trespass complaint. And
14 that became part of the claim that Shahmirza filed.

15 Then, as you know, there was an objection. There was
16 a motion for summary adjudication, a countermotion for summary
17 judgment. The Court held that the recorded easements were
18 extinguished and denied the debtors countermotion. And in that
19 Shahmirza filed a declaration that the transmission lines were
20 lowered and materially altered in his opposition to the MSJ.
21 We think that that's a factual dispute.

22 It's left open the issue of the statute of limitations
23 and the prescriptive easement and what was referred to by the
24 Court as a consensual easement by Shahmirza. And we simply
25 want to take discovery regarding that. But this schedule, the

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1 current schedule, presupposes that the debtors get no
2 opportunity to conduct discovery on the MSJ issues regarding
3 prescriptive easement and the statute of limitations.

4 And we're simply requesting that we'll go ahead and
5 we'll submit written discovery. We can get that submitted by
6 next week. We'll do requests for admissions, interrogatories,
7 production. This relates to the consensual easement issue, the
8 prescriptive easement, and the statute of limitations. And we
9 simply propose that we combine this discovery process for the
10 MSJ claims and the damages and just briefly extend those dates.
11 And the reason for that also is because, under the Kachadoorian
12 case that we referred to in the status report, we believe that
13 this is an inverse condemnation issue, which is pretty specific
14 in relation to damages.

15 So what our proposal, Your Honor, is that under the
16 current dates, the motion filing date is August 4th.
17 Obviously, they can file it whenever they want to file it, but
18 we just ask that this be extended to September 5th, 2023.
19 That's really just a month.

20 THE COURT: Okay.

21 MR. LAMB: The response --

22 THE COURT: Let me --

23 MR. LAMB: Go ahead.

24 THE COURT: No, you finish. Finish your point.

25 MR. LAMB: I'm sorry. The response currently is

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1 September 5th. We're asking for October 20th. The reply is
2 currently September 19th, and we're asking for November 17th.
3 The hearing is October 3rd, and we're just asking for the first
4 week in December sometime. And we want a complete written
5 discovery. The completion date under the current schedule is
6 September 15th. We're just asking for October 6th. That's
7 just basically twenty dates.

8 Then under completing the recipient deposition
9 discovery, the current schedule is October 15. We can do that
10 by that date, October 15th. But we need to have that discovery
11 completed before we do our response, which would be due October
12 20th. That's why we asked for that additional five days.

13 Right now, we don't have a current date for submitting
14 experts. I believe -- we believe that it's in the best
15 interests of not just us but Shahmirza that we submit and
16 exchange expert reports. Because this issue about valuation, I
17 think, is important, Your Honor. And we would propose that
18 that date be November 18th, 2023. We would complete expert
19 depositions. The current date is November 10th. We'd just
20 want to do it sometime in December, get it done in that month
21 of December, and then trial would shift from the first week in
22 December under the current proposal to just really the second
23 half of January or February 2024, depending upon, obviously,
24 the Court's calendar. And that's our request, Your Honor.

25 THE COURT: I'm just going to make a brief statement,

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1 and then I'll let Mr. Jacobson respond. My brief statement is
2 my statement about the parties are familiar with the dispute
3 was really kind of a 35,000-foot overview in the sense that
4 Shahmirza Komir acquired the property twentysomething years
5 ago, and all was quiet until something happened right around
6 2018. That's what I meant. And therefore, from my point of
7 view, there was nothing to litigate about until something
8 happened then. Now, whether it's not important in my mind,
9 what day the wires got lowered, and so on. So that's what I
10 had in mind.

11 Then the second thing I had in mind was that if there
12 had been no discovery -- excuse me, no status conference
13 scheduled, and there had been no colloquy like this, Mr.
14 Jacobson and Komir could have filed a motion for summary
15 judgment. And the federal rules have a procedure in place for
16 the respondent, PG&E, to ask for more time for discovery.
17 Lawyers who cooperate, cooperate and do it all the time.

18 So when Mr. Jacobson made his statement in his status
19 conference statement that the only discovery that may
20 potentially be relevant relates to remedy and damages, I didn't
21 know whether that is the case or not. So from my point of
22 view, leaving aside the actual dates on Mr. Jacobson's
23 schedule, from my point of view, well, why not do that first?
24 And if, as I stated in my tentative, if he wins, we're done.
25 If he needs to come back again for remedy in damages, there's

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1 time to do it, and so on. So that's all I had in mind. And I
2 wasn't predisposing of PG&E's right to seek discovery, but the
3 procedures are in place as to deal with the discovery once
4 you're facing the motion.

5 Mr. Jacobson, do you have any problem with the
6 adjusted time frame that Mr. Lamb is suggesting?

7 MR. JACOBSON: Well, it doesn't make sense to me.

8 THE COURT: Okay.

9 MR. JACOBSON: He's talking about discovery concerning
10 pre-2018. None of that matters. What they did before 2018 is
11 completely different than what they did in and after 2018. The
12 rights that they are trying to assert are those that pertain to
13 where the towers and lines are now. So the pre-2018 is not
14 relevant to that issue.

15 THE COURT: Well, am I correct that there was no
16 change in the physical height or position of the towers or the
17 wires until 2018? Is that correct?

18 MR. JACOBSON: That is correct.

19 THE COURT: Okay. Okay.

20 MR. JACOBSON: And they came out, and there was a
21 confrontation. And my offer of proof on that would be that
22 when it became apparent what they were doing, Shahmirza went
23 and said, stop, you can't do that.

24 THE COURT: Okay. I accept that. I accept that.
25 What I'm getting at is, then in your eyes, I gather your point

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1 of view is that the world began in 2018 for this dispute.
2 Therefore, there's nothing that needs to be discovered that
3 predates 2018.

4 MR. JACOBSON: That is correct.

5 THE COURT: Okay. But let -- but switch gears. You
6 don't deny that once you frame your motion, you believe is your
7 motion for summary judgment, they have a right to take
8 discovery relevant to that motion, right?

9 MR. JACOBSON: Yes.

10 THE COURT: Okay. So if they -- if you file your
11 motion and it begins in 2018, and Mr. Lamb says we want to take
12 a deposition for something that happened back in 2012, or
13 alternatively, if he can show that there are material facts
14 that undermine your position, that's certainly fair game for
15 discovery.

16 But let's go forward now to -- it's October 3rd, under
17 your schedule, and I rule that there is no prescriptive
18 easement and PG&E is a trespasser. It sounds to me like you
19 concede that you're going to have to -- probably have to prove
20 the economics of the damage. And if you accept that it can be
21 dealt with purely as a damage measure, much like inverse
22 condemnation, then it might indeed require experts, right?

23 In other words, stated differently, not -- how can you
24 win this case by October 3rd completely without proving
25 damages? And how can you prove damages without recognizing

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1 there may be a fact dispute about the amount of the damages?

2 MR. JACOBSON: I indicated in my statement that those
3 would be the issues that would remain for trial.

4 THE COURT: Okay. Okay.

5 MR. JACOBSON: There's an issue initially that they --
6 that the remedy is that they move the lines. They have no
7 right to have them there.

8 THE COURT: Okay.

9 MR. JACOBSON: And there is a damage issue that arises
10 because they are there. And yes, those two matters need your
11 decision.

12 THE COURT: Okay. Then that means, again, if I can
13 restate your argument, you believe, based upon your expectation
14 and the motion that you propose filing by August 4th, PG&E will
15 have an opportunity to dispute it, to oppose it., And with
16 everything going your way, you'll have a ruling on or after
17 October 3rd. But that won't be the end of the dispute. We
18 then we'll talk about the quantification of the damages, right?
19 So --

20 MR. JACOBSON: Yes.

21 THE COURT: Okay.

22 MR. JACOBSON: And sequentially, this makes sense to
23 me.

24 THE COURT: Okay.

25 MR. JACOBSON: Beefing these emphasis was on recorded

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1 documents.

2 THE COURT: Now, I understand that.

3 MR. JACOBSON: (Indiscernible).

4 THE COURT: But they -- but PG&E raises a legitimate
5 point, and I had the same question in my mind when I studied
6 your original motion, is why you didn't go for the whole
7 enchilada, if you will. And that's your choice. And I'm not
8 second-guessing you. It's like, if we could do most of your
9 case in two motions, why couldn't we do it in one? But that's
10 passed us now. I may --

11 MR. JACOBSON: Well, and maybe that was not the best
12 decision on my part.

13 THE COURT: It doesn't matter. It was a -- this is a
14 complicated case, and both sides have invested enormous amounts
15 of effort and lawyers' fees and thinking. And I appreciate the
16 challenge.

17 But let's go back again. Why -- it seems to me let's
18 play it out the way it would happen if we hadn't have this
19 preliminary discussion. You would have made your motion. You
20 would have set it on our motion calendar. And maybe Mr. Lamb
21 would have called you up and said, we need more time because we
22 need to take discovery. And you would have said, no, you don't
23 need to take discovery. And he would have said, yes, I do.
24 And guess what? You would have made a -- come before the
25 Court, and I would have said, sorry, Mr. Lamb, you're not

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1 entitled to it on this pattern and this motion, or sorry, Mr.
2 Jacobson, I will give PG&E more time.

3 So I guess what I'm saying is, it seems to me that
4 this is a bit of a hypothetical because I haven't seen your
5 motion, and you haven't written your motion. You've no doubt
6 thought about it. But if you file your motion, then you and
7 Mr. Lamb have this discussion, and if you concede that at least
8 within the four corners of your motion, there probably is --
9 are facts that need to be developed, you can consent to an
10 adjustment in the schedule so he can take his discovery. And
11 if you disagree, then I will make the decision. So what's
12 wrong with that?

13 MR. JACOBSON: If I'm understanding your comment
14 correctly, we would use the schedule that I have proposed, but
15 with some flexibility so that as the motion is filed and PG&E
16 expresses -- articulates some specific discovery that it seeks
17 to take, we provide the time and opportunity for that as
18 needed. And that does make --

19 THE COURT: Which is what the federal -- which is
20 what the federal rules require.

21 MR. JACOBSON: Yes.

22 THE COURT: Now, the federal rules, the number got
23 changed a couple of years ago, but the rule that says a party
24 opposing a motion for summary judgment, if you show why you
25 need time and what discovery you need, then the Court should

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1 grant it to you. Obviously, lawyers who cooperate with one
2 another and judges who expect the lawyers to cooperate, it
3 never happens. They just work it out.

4 So again, we're back to the point. You picked August
5 4th. I don't -- wouldn't have cared if you had picked July
6 20th or September 4th. You picked August 4th. And that
7 suggests to me that if there's no discovery necessary by PG&E,
8 then that looked like a very reasonable timetable.

9 Mr. Lamb isn't really resisting it. It's a very
10 modest suggestion he's changing. And look, let's try it a
11 different way. If I say, okay, Mr. Lamb's schedule sounds
12 right to me, but I'm not going to waste time with experts and
13 quantification of damages until we decide whether you have a
14 basis for your second motion to be out in the first place. In
15 other words, you conceded just now that if you have it your
16 way, on or after October 3rd, you'll have won another major
17 step in this case. But you won't have proven your economic
18 result or your remedy -- remedy or economic result.

19 Maybe your remedy is they have to pull the towers down
20 and put them on Parcel 3. But maybe your remedy is a dollar
21 recovery. But either way, those are material fact issues, not
22 matters that can be decided as a matter of law, I think.

23 So therefore, my thought is make your motion, stick
24 with this timetable, but be flexible, or accommodate Mr. Lamb
25 because, as I say, he's not -- he didn't say, by the way, we

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1 want to stretch this out a year. He says I want to stretch
2 this out about a month. So --

3 MR. JACOBSON: It just (Indiscernible) yours. I
4 thought I developed a reasonable timetable based on articulated
5 reasons for it, and I don't see a reason to change it. And if
6 as we go, there's some adjustment necessary, then we can deal
7 with that, and --

8 THE COURT: Okay. Let -- okay.

9 MR. JACOBSON: -- talk very well with one another in
10 this case with respect to scheduling. And if --

11 THE COURT: Let's try -- let's try a different
12 approach. It is now October 3rd. I just announced that your
13 motion for -- or your second motion will be granted. Now I
14 say, okay, gentlemen, when should we have a discovery and trial
15 prep for the remedy and the damages? And I think Mr. Lamb is
16 suggesting that we move that process up a little bit.

17 Isn't that correct, Mr. Lamb?

18 MR. LAMB: Your Honor, I'm just proposing we combine
19 it because I also think that if we can get some valuation
20 numbers, this, frankly, might help resolve this irrespective of
21 the --

22 THE COURT: Well, that's always true. That's always
23 true. You could do that tomorrow in a conference room. In
24 other words, of course --

25 MR. LAMB: No, I get that, but I think it would

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1 require expert reports. I mean, I think --

2 THE COURT: No, I understand, Mr. Lamb. But I think
3 what I'm -- I guess I'm -- I guess I'm agreeing with both of
4 you. I think Mr. Jacobson is saying this is not an
5 unreasonable schedule I proposed. But he's also conceding that
6 even if we stick with his schedule, he still has to come back
7 and prove something more to win the case completely. And
8 you're saying let's do it all at a compressed way.

9 But I think, Mr. Lamb, what may be throwing me off,
10 and maybe him off, is why are you talking about discovery that
11 predates 2018? So why are you? What is the relevance of any
12 facts that need to be developed pre-2018?

13 MR. LAMB: I'm not necessarily talking about discovery
14 that predates 2018, and I don't think the statute of
15 limitations both applies -- I mean, it depends on how you look
16 at the statute of limitations issue. They're saying, as I
17 understand it, that the reason why there's this trespass where
18 the statute of limitations doesn't apply is because it's a
19 material deviation. I don't think that's the case, and we're
20 entitled to take discovery on that. In fact, the current
21 schedule has percipient discovery October 15th. We're agreeing
22 with that. That's not going to change it. I think what Mr.
23 Jacobson is saying is we're not entitled to take any discovery
24 unless it's expert discovery, and that can't be true.

25 THE COURT: No, I --

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1 MR. JACOBSON: I'm not say that. There's a schedule
2 for it.

3 THE COURT: Yeah, I think you're reading too much into
4 it because what I -- the only problem I had with the -- until
5 I've heard from you, Mr. Lamb, but the only problem I had with
6 what Jacobson was suggesting is it seemed like the phase of the
7 litigation that we'll call the second summary judge motion was
8 going to be overlapping a post-second judgment hearing hearing.
9 And I -- my mind is, why? Why do they overlap? Why not break
10 it into sequences?

11 In other words, I obviously, I don't want you or him
12 to waste time and do the same kind of discovery or preparation
13 twice. But doesn't the case lend itself to that kind of linear
14 approach that you prove that there was a trespass or a
15 violation of -- or there there was something that is not
16 actionable, that doesn't give rise to PG&E's liability? And
17 only if and when that happens to be the case, that there has
18 been a damage or a trespass, you then prove what the damages or
19 the remedy are. In other words --

20 MR. JACOBSON: I'm trying to get --

21 THE COURT: Okay. In other words, try a different
22 way. From a layman's point of view, it sounds to me like until
23 2018 -- there's peace in the valley. There was no statute of
24 limitations issue because there was no dispute. And then, in
25 2018, PG&E did something that Komir decided violated its

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1 rights. And that triggered a bunch of things, one of which was
2 filing a suit in Superior Court, followed by the bankruptcy.
3 And then the statute of limitations arguments are moot.

4 And then the issues of was this discharged in the 2001
5 bankruptcy is completely off the table because it's totally
6 irrelevant. It's not a -- there was nothing to -- nothing was
7 violated in 20 -- until 2018.

8 MR. LAMB: Now, I understand that Your Honor, but the
9 difficulty that I have with this is clearly, at least as I
10 understand it, Shahmirza is agreeing that -- Mr. Jacobson's
11 agreeing that we get the complete recipient deposition
12 discovery by October 15th. But my response on the summary
13 judgment is due before that. That just doesn't make sense.

14 THE COURT: Okay.

15 MR. LAMB: And that's why I'm --

16 THE COURT: Okay. Mr. Jacobson, then why don't you --
17 why don't you help me on that one? Because, again, I -- it
18 looked to me like you had built in an overlap that didn't seem
19 right. So if I stick with your schedule for what I'll call the
20 the next phase, why shouldn't the final dates that you suggest
21 be pushed out even later? Or alternatively, do what Mr. Lamb
22 suggests is have the whole thing done into one package of time
23 and give him time to do everything in you time. And then we
24 have a hearing on the merits or a trial, a hearing or a trial,
25 in a much closer time frame.

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1 MR. LAMB: I think I dealt with those issues. I'm
2 proposing that we filed a motion on August 4th.

3 THE COURT: Right.

4 MR. LAMB: And that the response is due September 5th.
5 He's got a month. He's got a month to do discovery.

6 THE COURT: I know. But then you've got discovery
7 completed after that, by December 5th -- September 15th. So
8 what discovery is -- be -- you know, this is on -- at line 13
9 of your statement. What discovery is being done up to
10 September 15th if the response to the motion was already due on
11 September 5th? What is -- what are you discovering? What is
12 the subject matter of the discovery or the depositions that are
13 occurring in mid-September and mid-October if we have dealt
14 with your schedule that ended up on October 3rd?

15 MR. JACOBSON: Well, I don't think discovery on --
16 there's very limited discovery that I think is relevant. So we
17 may be talking about that again. But he can -- they can do any
18 discovery that they choose, starting August 4th.

19 THE COURT: But you haven't answered my -- come on.
20 You haven't answered my question. Mr. Lamb just asked the
21 question. The question is, if I'm supposed to have my response
22 to the motion on September 5th, then what am I -- why am I --
23 is my discovery deadline and my expert depositions being put
24 out to beyond that? And the obvious conclusion that I draw is
25 that in your mind, experts and some discovery is after you have

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1 disposed of the legal arguments that you believe can be dealt
2 with on your second motion for summary judgment.

3 MR. JACOBSON: Because there will be no disputed
4 material facts with respect to the motion.

5 THE COURT: Well, okay. You know what I'm inclined to
6 do? I mean, I do think this is just a communication mix, but
7 it seems to me that the better thing to do here is to tell you,
8 Mr. Jacobson, file your motion. We'll start with an
9 anticipated hearing on October 4th -- excuse me, August 4th.
10 And Mr. Lamb, as the rules -- Federal Rules of Civil Procedure
11 and bankruptcy rules available to him to extend out his time to
12 respond to your motion if he believes that he must get
13 discovery that's relevant to your motion --

14 MR. LAMB: Yes.

15 THE COURT: -- before then. And see my point, and I
16 think I'm agreeing with him, it sounds to me like this motion
17 is going to put in issue things that PG&E has a right to
18 develop as part of his opposition. But only you know because
19 only you have in mind what your motion's going to say. But to
20 me, it's an oversimplification, perhaps. But it's -- Jacobson
21 believes that he can prove all of the -- make all of the
22 arguments necessary to establish as a matter of law that his
23 client's entitled to summary judgment except for the
24 quantification of damages or an alternative remedy. And that's
25 something that's going to require fact development and/or

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1 experts.

2 So from my point of view, it should be -- it should be
3 stretched out in a linear fashion so that the timetable for the
4 second phase doesn't overlap the third one. Or alternatively,
5 the two timetables should be consolidated so they can all be
6 done together. So I can get -- I can give you the choice of
7 coming up with an agreed timetable for doing everything or
8 coming up with a logical and rational separation of the two
9 phases of the litigation. You follow my thinking? You don't
10 have to agree with me. But do you understand what -- the way
11 I'm stating it?

12 MR. JACOBSON: I think so. And my response is the
13 footprint that I proposed is reasonable. And if we start with
14 that and if, as the rules contemplate, we need an adjustment,
15 we adjust. But we started with let's do this a year from now.
16 And so --

17 THE COURT: We got -- we're off of that. He's
18 conceded that point. And so have I.

19 MR. JACOBSON: I suggest that we stick with my
20 footprint. If we need to adjust it, we can. But it creates a
21 process that makes sense.

22 THE COURT: Well, you have to -- you'll have to tell
23 me one more time then. Again, look -- just look at your
24 writing and look at page 3 --

25 MR. JACOBSON: Yes.

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1 THE COURT: -- line 13 and 14. What discovery and
2 what depositions on the next line, and what expert depositions
3 are going to be done within those deadlines? And why aren't
4 any or all of them necessary to have done before PG&E has to
5 respond to your motions? What's the answer to that question?

6 MR. JACOBSON: I may be missing the point, but those
7 are last dates. They can choose to conduct what discovery they
8 want to undertake.

9 THE COURT: I know, but that's my point. Well, you
10 haven't answered the question. So once again, I'll just ask
11 you the question. What expert depositions need to be completed
12 by November 10th?

13 MR. JACOBSON: Well, if we have a decision on October
14 3rd that there is no right to have those lines there, then you
15 would have five weeks for expert discovery on the remaining
16 remedy and damage issues, right?

17 THE COURT: No. No. Because here -- what you didn't
18 say when the expert reports are, which is a relevant date. If
19 there's going -- since this -- I don't believe we've talked
20 about experts before today. Maybe we have. But once we talk
21 about experts, we have to talk about deadlines for reports. So
22 what if I say, okay, fine, if the experts' depositions have to
23 be done by November 10th, the experts' reports have to be done
24 at least a month earlier? So but we haven't put that deadline
25 in there. But if Mr. Lamb is hiring Professor So-and-so, who

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1 says, you know, those lines can't be moved. And you hire
2 Professor Somebody Else, who says, oh, no, those have to be
3 moved. Then we've got competing experts. But they have to --
4 they have to make their reports, and -- before you can be
5 expected to take their depositions.

6 I mean, that's again, expert discovery 101 in the pre-
7 trial manual. So again, what -- or the same? The same is true
8 if -- if PG&E's response is due under your timetable by
9 September 5th to the motion, what discovery are you saying they
10 could continue and complete up until September 15? I mean,
11 you're the one that created the not later than, and the not
12 later than overlaps the -- an earlier deadline that appears to
13 conflict.

14 MR. JACOBSON: The schedule contemplates you read the
15 lines 8 and 9. The discovery may be -- may potentially be
16 relevant only to the remedy and damages.

17 THE COURT: But don't you --

18 MR. JACOBSON: It could be --

19 THE COURT: -- concede that point?

20 MR. JACOBSON: That's the --

21 THE COURT: You made that point? That's true, isn't
22 it?

23 MR. JACOBSON: They can be doing remedy and damage
24 discovery, but from the outset. We are going to have that
25 trial.

1 THE COURT: Well, I don't know. Maybe we are. But
2 Mr. Lamb, if we concede that for the next decision point, there
3 doesn't have to be any quantification of damages or alternative
4 remedies, what else is there to discover and to prepare for
5 other than just legal argument?

6 MR. LAMB: Like I explained, and we can get this
7 discovery out by next week, we'll have requests for admissions,
8 we'll have interrogatories, and we'll have requests for
9 production. And they relate to not only the inverse
10 condemnation claim but the statute of limitations because my
11 understanding is Shahmirza is saying that these lines were
12 materially altered. I don't believe they were. We can present
13 our own evidence, but I'm entitled to question Mr. Shahmirza on
14 the basis for that assumption that he makes in his declaration,
15 which I don't think is supported by anything.

16 THE COURT: No, you are. Of course, you are. Of
17 course, you're entitled to. But I don't understand something.
18 If you prove that the lines weren't materially altered, what's
19 the statute of limitations?

20 MR. LAMB: If they weren't materially altered, they've
21 known about these for years and years.

22 THE COURT: Well, of course.

23 MR. LAMB: That adjudication would bar this claim.

24 THE COURT: But Mr. Lamb, if they weren't material
25 altered, there's no damage. Does -- is that -- if you're -- if

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1 PG&E had a right to alter them --

2 MR. LAMB: That's correct.

3 THE COURT: -- then there's no statute of limitations
4 issue.

5 MR. LAMB: I think if they were not materially
6 altered, there is a statute of limitations defense that would
7 apply. Damages would not be appropriate. I'm just saying that
8 when I see the schedule that it's laid out, Your Honor, Mr.
9 Jacobson is trying to press this thing with the damages too.
10 And I'm saying -- I'm just asking for a reasonable amount of
11 time. I'm willing to put those together, okay, which I thought
12 was an accommodation. But the schedule, like I said, right
13 now, it says that I'm entitled to do written discovery and
14 depositions on a date prior to my response due.

15 THE COURT: Yeah. No, I know that. And Mr. Jacobson
16 is resisting that and seems to think not. Well, Mr. Jacobson,
17 I guess I'm surprised we can't seem to come to a point here,
18 but it seems to me that what I should tell you to do is tell
19 you to -- I'll stick with your schedule if there can be a
20 stipulation that there is nothing, nothing to be adjudicated or
21 determined before October 3rd that pertains to damages or
22 remedy.

23 I think realistically, the better approach would be to
24 tell -- ask you to adjust your timing, become more consistent
25 with Mr. Lamb's suggestion, and make your second motion for

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1 everything you're entitled to, and if you -- unless you --
2 unless there's a concession that, of course, there has to be
3 further discovery. But if there has to be further discovery,
4 then it doesn't belong to be part of the motion. In other
5 words, what you can't mix and match is the notion of a summary
6 judgment with further facts to develop because they don't fit.
7 You can't have summary judgment when you have material facts in
8 dispute.

9 So you've got to either consolidate the way you want
10 to win this case across the board or you've got to bifurcate
11 it. So there is an economy in dealing with the legal issues
12 and those which are not governed by material facts in dispute
13 with those that necessarily have material facts. And the most
14 quintessential example would be expert testimony. So I give
15 you your choice. You want to think about it? You want to meet
16 and confer with Mr. Lamb privately?

17 MR. JACOBSON: I'd be willing to, as you say, think
18 about it. And if I conclude it's appropriate, submit an
19 adjusted schedule. I don't know how we do that timewise. I
20 can do that in the next couple of days if we wanted to continue
21 this status conference for a week or something.

22 THE COURT: Well, I mean, look, you can just accept
23 Mr. Lamb's suggestion. We've got the whole question of a year
24 out off the table, I believe, he said in -- under his time
25 frame, this whole thing would be ready to go to final

1 adjudication and trial in January. I think that's what you
2 said. Didn't you say it, Mr. Lamb, or did I --

3 MR. LAMB: Yeah, late January or February, Your Honor.

4 THE COURT: Late January or February. Maybe what I
5 suggest, Mr. Lamb, why don't you off-line with Mr. Jacobson?
6 You send him an email or a message that suggests more
7 specifically the proposal that you would make. And Mr.
8 Jacobson, you meet and confer with him. And if you can agree
9 to that or negotiate some tweaks in that, we don't need a pre-
10 trial conference. I mean, again, I don't need to have a
11 conference to tell two experienced lawyers how to come up with
12 a great schedule. My schedule's the easiest here. You guys
13 have to do all the work. I mean, I think --

14 MR. JACOBSON: Yeah, I'm agreeable -- I'm agreeable
15 with that.

16 THE COURT: Okay. I mean, I'll pencil in a continued
17 hearing date if you guys come to blows about it. But I'm
18 expecting you'll work out a sensible solution because it seems
19 reasonable, I mean completely reasonable. But let's not beat
20 this to death. He's got -- you've got to build into your
21 discussion deadlines for extra reports and the exchange of
22 those reports. And then put in the opportunity to just -- to
23 depose the experts or if any -- because frankly, depose any
24 percipient witnesses, Mr. Shahmirza, or anyone else who may be
25 a material witness. But that's easy. Those are things you can

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1 you can work on.

2 So Mr. Rupp, you know the -- you're the keeper along
3 with Ms. Parada of our PG&E schedule. What's our -- well, I
4 know we have a hearing date next week, but what's our next
5 regular PG&E after next week? The --

6 MR. RUPP: I'm sorry --

7 THE CLERK: We have July 26, Your Honor.

8 THE COURT: July 26th, okay. Let's do this. I -- Mr.
9 Lamb and Mr. Jacobson, I'm urging you gentlemen to work out a
10 mutually acceptable sequence consistent with what we've been
11 discussing. I'll put -- I'll just continue today to
12 September -- July 26th at 10:00, in case there's a breakdown of
13 this communication. But I really urge you to resolve it and
14 give Ms. Parada a schedule that you don't have to ask my
15 permission. She knows my schedule. I know you know the PG&E
16 timing, and we have a lot of flexibility in the calendar if we
17 need to adjust it for your convenience.

18 So whether it's the convenience of your clients or
19 your own schedule, I want to accommodate you. But I want to be
20 more consistent with -- why don't we say Jacobson as modified
21 by Lamb in the timetable that we've talked about for the
22 purpose, really, of avoiding this risk of overlap and, in fact,
23 having a reasonable timetable that takes us to the end of the
24 trial court involvement in this dispute so I can make a final
25 decision. People can make their choices about appeals or

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1 settlement or whatever. Okay. July 26th at 10:00. I hope I
2 don't see you then.

3 MR. JACOBSON: Can I make --

4 THE COURT: Yes, sir.

5 MR. JACOBSON: -- just a comment, Judge?

6 THE COURT: Of course.

7 MR. JACOBSON: To avoid any negative pregnant here,
8 today is the first time that I have ever heard any suggestion
9 that the modification or the change, the replacement in 2018
10 was not material. That has just been a given all the way along
11 until these comments today.

12 Secondly, counsel's comments about inverse
13 condemnation make it sound like that's been a part of the mix
14 here as we've gone along. The status conference statement in
15 this discussion this morning is the first mention of any
16 inverse condemnation. So you know, we've had this discussion
17 in part in the context of there supposedly being a dispute
18 about whether there was a material alteration in 2018. And
19 that's something that has never been suggested before. And
20 there's been discussion or comments about the inverse
21 condemnation issue in the case. There is no inverse
22 condemnation issue in the case. It's not in a pleading. It's
23 not in an objection. It's not in anything.

24 THE COURT: Well, I understood it to be kind of an
25 analogy, but as far as the material alteration, your client

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1 believes there was a material alteration, right?

2 MR. JACOBSON: Yes.

3 THE COURT: Okay

4 MR. JACOBSON: So he has always said so.

5 THE COURT: All he has to do is prove it. And if Mr.
6 Lamb can only argue against that proof that he doesn't believe
7 it's material, I guess he'll have to persuade me rather than
8 you. And as far as interest condemnation, I mean, I accept
9 that the words haven't been used. I think the concept I
10 understand, Mr. Lamb, isn't -- am I right on the concept?

11 MR. LAMB: Well, you are right on the concept, Your
12 Honor.

13 THE COURT: I mean --

14 MR. LAMB: We have never -- we have never stated that
15 we agree that there's not been a material alteration. I mean,
16 that's just not accurate at all. You know --

17 MR. JACOBSON: Well, you don't --

18 THE COURT: I mean, look --

19 MR. LAMB: That's an allegation that they have made.

20 THE COURT: When a utility burns down somebody's
21 house, that's inverse condemnation under the law. When a
22 utility does something that takes away someone's pleasure or
23 use of property because they have done something, I believe it
24 has been addressed as inverse condemnation because it's an
25 affirmative act by the public utility to cause property value

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1 decline to somebody else.

2 Mr. Jacobson, I'll accept that the phrase hasn't been
3 used, but I think the concept is not new, at least to me. But
4 first -- listen, if you can show that this is a made-up
5 argument and that there's no there there that you'll make --
6 you'll make your case. Listen, so I accept that for you
7 personally and your client, maybe this is the first time you
8 believe that the other side has uttered those words or even the
9 material alteration words. It doesn't matter whether they've
10 said it twenty times or once, they -- the question is whether
11 their -- your client has suffered those consequences, and if
12 so, what is PG&E's responsibility to it? And that's why we're
13 having the trial.

14 MR. JACOBSON: Maybe -- I didn't -- I didn't intend to
15 provoke an argument about it. I just didn't want to sit
16 through this hearing with those comments --

17 THE COURT: Okay.

18 MR. JACOBSON: -- without commenting on them.

19 THE COURT: I don't consider this an argument. I
20 consider this a spirited discussion among serious people. I
21 will or not -- I will or will not see you both on July 26th at
22 10:00. I urge you to come together for a reasonable schedule
23 consistent with -- the matters we talked about today. And
24 we'll leave it at that. Okay.

25 MR. JACOBSON: Thank you.

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1 THE COURT: Thank you all for your time.

2 MR. LAMB: Thank you, Your Honor.

3 THE COURT: Conclude the hearing.

4 (Whereupon these proceedings were concluded at 10:43 AM)

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1 C E R T I F I C A T I O N
23 I, Heidi Jolliff, certify that the foregoing transcript is a
4 true and accurate record of the proceedings.
56 
7 _____
89 /s/ HEIDI JOLLIFF, CDLT-292
1011 eScribers
12 7227 N. 16th Street, Suite #207
13 Phoenix, AZ 85020
1415 Date: July 11, 2023
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